1957, our courts have decided a few cases involving contempt of court. *A-G* v *Arthur Lee Meng Kuang*[5] and *Trustees of Leong San Tong Khoo Kongsi (Penang) & Ors* v *SM Idris & Anor*[6] are two of such cases. The defence had sought to distinguish those cases and contended that they are not applicable. But it is quite clear from those cases that this court has recently held that in deciding whether any criticism on a court or judge falls within the limits of reasonable courtesy and good faith, the court should not, however, lose sight of local circumstances and conditions. This was also the proposition laid down in *PP* v *The Straits Times Press Ltd*[30] and in *PP* v *SRN Palaniappan & Ors*[31] where Spenser Wilkinson J hesitated to follow too closely the decisions of English courts on the subject of contempt without first considering whether the relevant conditions in England and this country are similar.

For the reasons stated, I have to conclude that the respondent is guilty of contempt of court.

Application allowed.

Solicitors: *Jagjit Singh & Co; Thevin Chandran Siva Wong & Jamal; Presgrave & Matthews.*

Reported by *Prof Ahmad Ibrahim*

Yong Eng Kong & Ors v Ying Tien Ping

HIGH COURT (KUCHING) — ORIGINATING SUMMONS NO KG 198 OF 1990
HAIDAR J
11 SEPTEMBER 1990

Unincorporated Associations — Constitution — Powers of interim committee — Application for directions by members of association in respect of previous order of court — Non-compliance with Constitution of association — Allegation of failure to interpret consent order in line with the Constitution — Rules of the High Court, O 7 r 2

Words and Phrases — 'Approve'

The Foochow Association was bound by a consent order made in June 1990 in respect of a suit commenced against them in 1981. The consent order provided, inter alia, for the appointment of an interim committee who were to approve the membership of the association as at 22 April 1981 and arrange for a general meeting to be held to elect office bearers. The interim committee then determined that of the 680 members still remaining, 497 members were in arrears of subscription payments. An advertisement was then published in the Chinese press giving notice that all members who were in arrears of subscriptions were to settle them in order to be eligible to vote or to be qualified to hold office at a general meeting scheduled to be held on 17 September 1990. The interim committee then accepted payments of arrears of monthly subscriptions which in some cases dated back several years. The three plaintiffs then filed this application on behalf of themselves and 46 others against the chairman of the interim committee, seeking directions from the court in respect of the powers of the interim committee as set out in the consent order vis-a-vis the Constitution of the association. Article 13(3) of the Constitution provides that where a member's arrears of subscription exceeds two months, he shall receive written notification and shall be denied the privileges of membership until his account is settled; art 13(4) sets out that a member whose arrears exceed six months shall automatically cease to be a member of the association.

Held, deciding in favour of the plaintiffs:

(1) Considering that the onus is on the members to pay their subscriptions, it would appear that the use of the word 'shall' in art 13(3) is directory and not mandatory, and the failure to invoke art 13(3) does not mean that art 13(4) cannot be invoked. It is merely a reminder to the defaulting members of their obligations as members of the association to pay their subscriptions and no more.

(2) It is the obligation of every member to pay his subscription if he wants to continue to be a member and to exercise his rights within the province of the Constitution of the association. Article 13(4) clearly provides for membership to cease automatically when a subscription is in arrears of six months thereby indicating that such a member shall ipso facto cease to be a member of the association; there is a tacit resignation by such a member.

(3) Therefore the question of revival of membership by paying up all the arrears does not arise. In any event, there is no such express provision in the rules and the Constitution of the association giving power to the executive committee or for that matter the interim committee to so exercise for the main purpose of enabling defaulting members to pay up their arrears so as to enable them to vote at the coming general meeting, when in fact and in law they ceased automatically to be members of the association. However, art 13(5) gives the power to the executive committee to fix a re-entrance fee for such members who allowed their membership to cease through arrears of subscriptions. This is the only way for them to come back as members of the association and not otherwise. To allow those defaulting members to revive their membership by paying up their arrears as was done in this case by the interim committee would be nugatory of art 13(4).

(4) As regards the approval of the membership register as at 22 April 1981, the interim committee must approve, that is to confirm authoritatively, only the list of members who are not in arrears and are not in default of any provisions of the rules and Constitution of the association. Only those members who are not in arrears in their subscriptions and are not caught by art 13(4) of the association are entitled to attend and vote at the coming general meeting of the association and be elected as well to the executive committee. The action of the interim committee in inviting the defaulting members to pay the arrears of their subscription is beyond the scope of the terms of reference under the consent order.

(5) In view of the court's decision, it was unnecessary for the court to make an order for the extension of the holding of the general meeting. In view of the bona fide belief of the interim committee that they were acting within the scope of reference of the consent order vis-a-vis the Constitution of the association, no order was made as to costs.

[Bahasa Malaysia summary

Persatuan Foochow diikat oleh satu perintah persetujuan yang dibuat pada Jun 1990 bersangkutan dengan satu guaman yang dimulakan terhadap mereka dalam 1981. Perintah persetujuan itu memperuntukkan, antara lain, untuk perlantikan satu

jawatankuasa sementara yang akan meluluskan keahlian persatuan itu pada 22 April 1981 dan mengatur mesyuarat agung untuk melantik pemegang jawatan. Jawatankuasa sementara itu kemudiannya menentukan bahawa daripada 680 ahli yang tinggal, 497 ahli lewat dalam membayar bayaran keahlian mereka. Satu iklan diterbitkan dalam akhbar-akhbar Cina memberi notis kepada semua ahli yang lewat dalam membayar bahawa mereka harus menyelesaikan bayaran itu supaya berhak mengundi atau supaya layak untuk memegang jawatan dalam satu mesyuarat agung yang akan diadakan pada 17 September 1990. Jawatankuasa sementara itu kemudiannya menerima bayaran keahlian yang terlewat yang dalam beberapa kes terlewat untuk beberapa tahun. Ketiga-tiga plaintif selepas itu memfail permohonan ini bagi pihak mereka sendiri dan 46 orang yang lain terhadap pengerusi jawatankuasa sementara itu, memohon arahan daripada mahkamah berkenaan kuasa jawatankuasa sementara itu seperti yang terkandung di dalam perintah persetujuan berbanding dengan Perlembagaan persatuan itu. Perkara 13(3) Perlembagaan itu memperuntukkan bahawa bila bayaran seseorang ahli terlewat melampaui dua bulan, beliau akan menerima pemberitahuan bertulis dan akan dilucutkan hak-hak keahliannya sehingga akaunnya diselesaikan; perkara 13(4) menyatakan bahawa seseorang ahli yang bayarannya terlewat melampaui enam bulan akan secara automatis luput keahliannya.

Diputuskan, memberi penghakiman kepada pihak plaintif:

(1) Memandangkan yang tugas diletakkan pada ahli-ahli untuk membayar bayaran keahlian, nampaknya penggunaan perkataan 'shall' dalam perkara 13(3) adalah bersifat arahan dan bukan mendatori, dan kegagalan memakai perkara 13(3) tidak bermakna yang perkara 13(4) tidak boleh dipakai. Ianya cuma satu peringatan kepada ahli-ahli yang ingkar tentang kewajipan mereka sebagai ahli persatuan untuk membayar bayaran keahlian dan tidak lebih daripada itu.

(2) Adalah menjadi kewajipan setiap orang ahli untuk membayar bayaran keahlian jika beliau ingin terus menjadi ahli dan menjalankan haknya di bawah peruntukan Perlembagaan itu. Perkara 13(4) jelas memperuntukkan bahawa keahlian akan luput secara automatis bila bayaran terlewat selama enam bulan, lantaran itu menunjukkan bahawa seseorang ahli akan ipso facto tamat keahliannya; terdapat pemberhentian secara diam oleh ahli itu.

(3) Jadi soal menghidupkan semula keahlian dengan membayar bayaran yang terlewat tidak berbangkit. Apa sekali pun, tidak terdapat peruntukan nyata sebegitu dalam peraturan dan Perlembagaan persatuan itu yang memberi kuasa kepada jawatankuasa eksekutif atau jawatankuasa sementara untuk bertindak sedemikian bagi tujuan utama membolehkan ahli-ahli yang ingkar untuk menjelaskan bayaran yang terlewat untuk membolehkan mereka mengundi di mesyuarat agung yang bakal diadakan, walhal pada hakikatnya dan mengikut undang-undang keahlian mereka luput secara automatis. Walau bagaimanapun, perkara 13(5) memberikan kuasa kepada jawatankuasa eksekutif untuk menentukan yuran kemasukan semula bagi ahli-ahli yang telah membenarkan keahlian mereka luput kerana lewat membuat bayaran. Ini adalah cara yang tunggal untuk mereka kembali menjadi ahli persatuan dan bukan sebaliknya. Untuk membenarkan ahli-ahli yang ingkar menghidupkan semula keahlian mereka dengan menjelaskan bayaran yang terlewat seperti yang dilakukan di dalam kes ini oleh jawatankuasa sementara akan mengabaikan perkara 13(4).

(4) Berkenaan pengesahan daftar keahlian pada 22 April 1981, jawatankuasa sementara mesti meluluskan, yakni mengesahkan dengan penuh kuasa, cuma senarai ahli-ahli yang tidak terlewat dan tidak mengingkari apa-apa peruntukan peraturan dan Perlembagaan persatuan itu. Hanya ahli-ahli yang tidak terlewat membuat bayaran dan tidak disekat oleh perkara 13(4) persatuan itu berhak menghadiri dan mengundi di mesyuarat agung persatuan yang bakal diadakan dan dilantik menganggotai jawatankuasa eksekutif. Tindakan Jawatankuasa sementara menjemput ahli-ahli yang ingkar untuk menjelaskan bayaran yang terlewat adalah terkeluar daripada batas bidang tugas mereka di bawah perintah persetujuan itu.

(5) Memandangkan keputusan mahkamah, adalah tidak berguna bagi mahkamah membuat perintah melanjutkan perjalanan mesyuarat agung itu. Memandangkan jawatankuasa sementara memegang kepercayaan yang bona fide bahawa mereka bertindak di dalam batas bidang tugas mereka mengikut perintah itu berbanding dengan Perlembagaan persatuan, tidak ada perintah dibuat tentang kos.]

Case referred to

1 *Re The Sick and Funeral Society of St John's Sunday School, Golcar Dyson* v *Davies* [1972] 2 All ER 439 (folld)

Legislation referred to

Rules of the High Court 1980 O 7 r 2

KJ Foo (Miss) for the plaintiffs.
Lee Chuan Eng for the defendant.

Cur Adv Vult

Haidar J: The plaintiffs, namely, Yong Eng Kong, Ting Yang Tieh @ Ting Kong Ing and Lee Dung Chu, filed this originating summons on their own behalf and on behalf of 46 other members of the Foo Chow Association, Kuching ('Association') against Ying Tien Ping as chairman of the interim committee of the association under O 7 r 2 of the Rules of the High Court 1980 seeking certain directions from the court in respect of the consent order dated 19 June 1990 in Suit No 189 of 1981 regarding the powers of the interim committee as per the said consent order.

The directions of the court are primarily centred on the action of the interim committee advertising in the Chinese press (see exh YEK 8-B) purporting to call on all members who were in arrears of their monthly subscriptions to settle them with the secretary in order that they may be eligible to vote and/or be qualified to hold office in the association at the general meeting of the association scheduled to be held on 17 September 1990. In fact the secretary of the interim committee has since accepted payments of arrears of monthly subscriptions which in some cases date back several years (exhs YEK9-A to J).

Background facts

The association was founded sometime in 1931 and officially registered after the Second World War on 12 February 1958. The objects of the association are spelt out under art 3 (exh YEK3). Sometime in 1981, some 31 of the then existing members of the association instituted a Writ of Summons No KG 189 of 1981 against

the then chairman and secretary-general of the association. The plaintiffs in the said action obtained an interim injunction against the then defendants on 22 April 1981, restraining them from convening and/or holding an annual general meeting of members of the association on 26 April 1981 until after the trial of the said action or until further order.

Subsequent to the said interim injunction and in compliance thereof, the association did not hold the annual general meeting on 26 April 1981 and indeed for the next nine years or so as no attempt, I believe, was made to set aside the interim injunction. However, the association continues to function and in striving to attain the objects of the association as laid down in its rules and Constitution, it yearly called on its members to pay up their monthly membership subscriptions in the Chinese press in order to carry out its activities (exhs YEK4-AA to EE).

By consent order dated 19 June 1990 (exh YEK-5), the said interim injunction was discharged and an interim committee was appointed. The terms of reference of the interim committee are:

(1) That an interim committee comprising the persons named therein be and is hereby appointed to manage the affairs of the association until the next general meeting.
(2) That the interim committee shall approve the membership as at 22 April 1981 and arrange for a general meeting of the association to, inter alia, elect office bearers for the years 1990-1991, to be held within three (3) months from the date of this order, such general meeting to be called and held in accordance with the rules of the association.
(3) That the interim committee shall be at liberty to apply for extension of time if necessary.

According to the affidavit of Ying Tien Ping, the chairman of the interim committee and the defendant in this originating summons (encl 8), from the membership record available as at 22 April 1981, the association has 731 members. During the period from 27 April 1981 to 26 August 1990, 50 members have died. Further, one member has emigrated to China. This leaves a total of 680 members as at 26 August 1990. However, from the said record of the association only 183 members are up to date in their subscriptions payments and a total of 497 members are in arrears. He therefore verily believed that those 497 defaulting members ought to be dealt with under art 13(3) and (4) of the rules and Constitution of the association and that art 13 ought to be read as a whole. Hence the notice issued purportedly under art 13(3) to each and every defaulting member to pay up the arrears as in the advertisement (exh YEK8-B) before the interim committee believed they could take action under art 13(4). The advertisement and the receipt of the payments of the arrears of the defaulting members by the interim committee so that they are entitled to vote and also be elected at the general meeting sparked off the filing of this originating summons by the plaintiffs.

Article 13(3) reads:

> Any member who allows his arrears to exceed two months subscription shall receive a written notification signed by or on behalf of the secretary-general, and shall be denied the privileges of membership until he settles his account.

Article 13(4) reads:

> Any member who allows his arrears to exceed six months' subscription shall automatically cease to be a member of the association and the Executive Committee may direct that legal action be taken against him, provided that they are satisfied that he has received due notice of his debts.

The issue then is on the powers of the interim committee as embodied in the said consent order vis-a-vis the interpretation of art 13(3) and (4) of the association. Whatever it may be, in my view, the interim committee must act within the provisions of the rules and Constitution of the association and there should not be any dispute as to this.

Mr Lee, counsel for the defendant, argued that the word 'shall' in art 13(3) denotes that it is mandatory for action to be taken under the said provision first before art 13(4) can be invoked. Miss Foo, counsel for the plaintiffs, argued that it is not mandatory and went on to say that it is the duty of every member to pay his subscription promptly without the association having to issue notices to pay up the subscriptions or the arrears as seems clear from art 13(2) which reads:

> All monthly subscriptions shall be payable to the Treasurer within the month thereof.

In my view, considering that the onus is on the members to pay their subscriptions as seems to be the object of art 13(2) it would appear therefore that the use of the word 'shall' in art 13(3) is *directory* and *not mandatory* and the failure to invoke art 13(3) does not mean that art 13(4) cannot be invoked as seemed to be the submission of Mr Lee, counsel for the defendant. I would say that it is merely a reminder to the defaulting members of their obligations as members of the association to pay their subscription and no more.

I will next have to consider art 13(4) and its effect. The wordings seem clear and unambiguous to me that a member who allows his arrears to exceed six months' subscription *shall automatically* cease to be a member of the association. As I said earlier, it is the obligation of every member to pay his subscription if he wants to continue to be a member and to exercise his rights within the province of the constitution of the association. In this respect Megarry J in *Re The Sick and*

Funeral Society of St John's Sunday School, Golcar Dyson v *Davies & Ors*[1] at p 447, said:

> I should be very slow to accept that a member of a society may disregard all his obligations as a member for several years, and then, when it appears that there is some advantage in resuming his membership, assert that he is still a member because the correct procedure under the rules to terminate his membership has not been followed. The question, of course, is not one of expulsion, or of the society snatching at some trivial or short-lived breach of rules by a member to deny him membership; it is a question of a voluntary disregard of the obligations of membership over a continuous period of years.

Further on at p 448 thereof, Megarry J gave his views on the effect of where a membership is said to have lapsed as follows:

> If their membership is said to have 'lapsed', that may be another way of describing a tacit resignation. However it is described, it seems right that there should be such a doctrine, so that neither the member nor the club or society should be able to claim against the other on the basis that what has long been dead de facto still lives de jure. A moribund membership ought not to be capable of resurrection.

Here art 13(4) clearly provides for the membership to cease automatically when a subscription is in arrears of six months thereby indicating that such a member shall ipso facto cease to be a member of the association and, to use the words of Megarry J, there is a tacit resignation by such a member. Therefore in my view the question of revival of the membership by paying up all the arrears does not arise. In any event there is no such express provision in the rules and the Constitution of the association giving the power to the executive committee or for that matter the interim committee to so exercise, as would appear in this case for the main purpose of enabling the defaulting members to pay up their arrears so as to enable them to vote at the coming general meeting of the association, when in fact and in law they ceased automatically to be members of the association and, if I may say so, after having 'abandoned the ship'. However it does not mean that the door is shut out for them by the association as art 13(5) gives the power to the executive committee to fix a re-entrance fee for such members who allowed their membership to cease through arrears of subscriptions. In my view this is the only way for them to come back as members of the association and not otherwise. To allow those defaulting members to revive their membership by paying up their arrears as was done in this case by the interim committee would, with due respect, be nugatory of art 13(4).

In the circumstances, the approval of the membership register as at 22 April 1981 by the interim committee must of necessity mean only one thing, that is, to approve only the list of members who are not in arrears and are not in default of any provisions of the rules and Constitution of the association. Quite apart from this, the interim committee obviously will also have to delete from the list those members who are dead or who had migrated. The word 'approve' according to *The Shorter Oxford English Dictionary* (3rd Ed) means 'to confirm authoritatively'. Therefore to confirm authoritatively the list of the membership must denote that it must be done within the framework of the authority under the Constitution of the association.

As such I would direct that only those members who are not in arrears in their subscriptions and are not caught by art 13(4) of the association are entitled to attend and vote at the coming general meeting of the association and be elected as well to the executive committee in accordance with the rules and Constitution of the association. The action of the interim committee in inviting the defaulting members to pay the arrears of their subscriptions is beyond the scope of the terms of reference under the said consent order for the reasons set out by me.

In view of my decision, it is unnecessary for me to make an order for the extension of the holding of the annual general meeting scheduled for 17 September 1990 as in prayer E.

In respect of costs, though Miss Foo pressed for costs I believe that she was not really seriously pursuing for costs and in any event in view of the bona fide belief of the interim committee that they were acting within the scope of the terms of reference of the consent order vis-a-vis the Constitution of the association the proper order as to costs should be that there be no order as to costs and I do so order.

Order accordingly.

Solicitors: *Foo Kana & Co; Ee & Lim.*

Reported by *Azra Moiz*